

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MICHAEL R. AND SUSAN C. CLARK,

No. C 11-0471 RS

Plaintiffs,

v.

**ORDER CONTINUING HEARING**

UNITED STATES OF AMERICA,

Defendant.

Plaintiffs Michael and Susan Clark brought this action seeking a refund of approximately \$1 million they paid in federal income taxes, plus interest. Prior to the close of discovery, the Government filed a motion for summary judgment. At plaintiff's request, the hearing was continued, and the parties were permitted to file supplemental briefing to incorporate any germane facts or arguments developed through additional discovery. Plaintiffs subsequently noticed a motion for a further continuance of the hearing date and other deadlines, set to be heard on the same date as the summary judgment motion. Although plaintiffs were requesting an extension of their deadline for supplemental briefing, they took no steps to ensure that the continuance request would be considered prior to the passing of that deadline.<sup>1</sup> Plaintiffs' continuance request also proposed

<sup>1</sup> Had plaintiffs filed their continuance request under Civil Local 6-3, for example, any opposition would have been due within four days and the matter could have been decided in a timely fashion.

1 extending the discovery cut off. Again, however, because plaintiffs failed to utilize Rule 6-3, that  
2 issue appears moot, as the extended deadline they proposed has already passed.

3 While the parties have now filed supplemental materials regarding the summary judgment  
4 motion notwithstanding plaintiffs' pending continuance request, the Government has not responded  
5 to the continuance request. Additionally, on September 24, 2012, the Government filed a motion to  
6 quash certain deposition subpoenas, which it failed to notice or set for hearing. From captions in  
7 subsequent briefing on that motion, it appears the parties may be expecting it to be heard on  
8 November 8, 2012 by the undersigned. Because all discovery disputes in this action have  
9 previously been referred to the assigned magistrate judge, however, that motion should have been  
10 presented to Judge Cousins in accordance with the Local Rules and his procedures.

11 At this juncture, it is not clear whether any outstanding discovery issues, or information that  
12 may have been the subject of recently completed discovery proceedings, is likely to be material to  
13 the questions presented by the Government's summary judgment motion. Nevertheless, under all  
14 the circumstances, the hearing on the motion will be continued to December 20, 2012, at 1:30 p.m.  
15 Absent extraordinarily compelling or emergency circumstances, no further requests for continuances  
16 of the hearing date will be entertained. Not less than 14 days prior to the hearing, plaintiffs may file  
17 a supplemental brief, not to exceed 7 pages, incorporating any additional material facts that may  
18 have been discovered subsequent to their prior briefing. Within 7 days thereafter, the Government  
19 may file a response, also not to exceed 7 pages. The parties are directed to exercise diligence, and  
20 careful compliance with the Local Rules, in resolving any and all discovery issues that remain open,  
21 including arranging for the motion to quash to be decided, if still necessary.

22  
23 IT IS SO ORDERED.

24  
25 Dated: 11/6/12



26 RICHARD SEEBORG  
27 UNITED STATES DISTRICT JUDGE  
28